

BellSouth Telecommunications, Inc.
Legal Department
1600 Williams Street
Suite 5200
Columbia, SC 29201

patrick.turner@bellsouth.com

Patrick W. Turner
General Counsel-South Carolina

803 401 2900
Fax 803 254 1731

March 23, 2005

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Generic Proceeding to Address the Appropriate Rate Classification or Rate
Structure for Telephone Lines Located in Elevators and for Telephone Lines
Located in Proximity to Swimming Pools
Docket No. 2005-15-C

Dear Mr. Terreni:

Enclosed for filing are an original and twenty-five copies of BellSouth
Telecommunications Inc.'s Direct Testimony of Carlos Morillo in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this Testimony as
indicated on the attached Certificate of Service.

Sincerely,

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record
DM5 #578105

RETURN DATE: OK D. Duke
SERVICE: OK D. Duke

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF CARLOS MORILLO
3 BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

4 DOCKET NO. 2005-15-C

5 MARCH 23, 2005

6
7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR
9 BUSINESS ADDRESS.

10

11 A. My name is Carlos Morillo. I am employed by BellSouth as Director – Policy
12 Implementation for the nine-state BellSouth region. My business address is
13 675 West Peachtree Street, Atlanta, Georgia 30375.

14

15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16 AND EXPERIENCE.

17

18 A. I graduated from West Virginia University in 1984 with Bachelor of Science
19 degrees in Economics & Geology. In 1986, I received a Masters in Business
20 Administration with concentrations in Economics and Finance from West
21 Virginia University. After graduation, I began employment with Andersen
22 Consulting supporting various projects for market research, insurance, and
23 hospital holding companies. In 1990, I joined MCI, Inc. as a Business Analyst.

1 My responsibilities included supporting the implementation of processes and
2 systems for various business products and services. In addition to my Business
3 Analyst duties, I worked as a Financial Analyst evaluating the financial
4 performance of various price adjustments as well as promotion deployment,
5 including the state and Federal tariff filings. I was also a Product Development
6 Project Manager supporting the deployment of business services. In 1994, I
7 joined BellSouth International, as a Senior Manager of IT planning, and later
8 became Director of Business Development. In 1999, I became Director of
9 eCommerce in BellSouth's domestic operations and in 2002, Director of
10 International Audit. I assumed my current position in May of 2004.

11

12 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

13

14 A. The purpose of my direct testimony is to address the issue identified in the
15 Revised Notice of Filing and Hearing that the Public Service Commission of
16 South Carolina (the "Commission") issued in this docket on January 31, 2005.

17

18 Q. WHAT IS YOUR UNDERSTANDING OF THE ISSUE IN THIS DOCKET?

19

20 A. As I understand it, the issue in this docket is the appropriate rate classification
21 or rate structure for "those telephone lines required by regulation or code for
22 safety or emergency use, such as telephone lines required to be located in
23 elevators or in proximity to swimming pools." *See* Revised Notice. *See also*

1 Order Holding Disposition in Abeyance and Creating Generic Docket, *In Re:*
2 *Rufus Watson, Bay Meadows Homeowners Assn. v. Horry Telephone*
3 *Cooperative*, Order No. 2004-466 in Docket No. 2003-221-C at p.7 (October
4 5, 2004) (“the HTC Order”)(“A generic docket is established to address the
5 appropriate rate classification or rate structure for telephone lines which are
6 required by code or regulation for safety or emergency use, such as telephone
7 lines located in elevators and in proximity to swimming pools.”).

8
9 Q. HOW DID THIS ISSUE ARISE ORIGINALLY?

10
11 A. As I understand it, a member of the Bay Meadows Homeowners Association
12 (“HOA”) filed a complaint with the Commission because Horry Telephone
13 Cooperative, Inc. (“HTC”) charges business rates for lines that serve
14 telephones in elevators and at the swimming pool at a condominium complex
15 located in HTC’s service area. *See* HTC Order at pp. 1-4.

16
17 Q. WHAT IS BELL SOUTH’S POSITION ON THIS ISSUE?

18
19 A. First, BellSouth is not aware of any code or regulation that requires the use of a
20 landline telephone, as opposed to other devices, for safety or emergency use at
21 a swimming pool or in an elevator. Second, to the extent that the owner of a
22 swimming pool or elevator elects to use a landline telephone for these
23 purposes, business rates currently apply, and should continue to apply, to such

1 telephone lines.

2

3 Q. PLEASE EXPLAIN BELLSOUTH'S POSITION THAT IT IS NOT AWARE
4 OF ANY CODE OR REGULATION THAT REQUIRES THE USE OF A
5 LANDLINE TELEPHONE, AS OPPOSED TO OTHER DEVICES, FOR
6 SAFETY OR EMERGENCY USE AT A SWIMMING POOL OR IN AN
7 ELEVATOR.

8

9 A. The answer to that question is largely legal in nature, and it is addressed in the
10 Pre-Hearing Brief that BellSouth filed with the Commission on March 23,
11 2005. For the Commission's convenience, a copy of that Pre-Hearing Brief
12 (without attachments) is attached as Exhibit CRM-1 to my testimony.

13

14 Q. DO BELLSOUTH'S TARIFFS ADDRESS WHEN BUSINESS RATES
15 APPLY AND WHEN RESIDENCE RATES APPLY?

16

17 A. Yes. Section A2.3.6.A of BellSouth's General Subscriber Service Tariff says
18 that "in general business rates apply at business locations and residence rates
19 apply at residence locations." It goes on to say that "the determination as to
20 whether subscriber service should be classified as business or residence should
21 be based as described in B. or C. following."

22

1 Q. COULD YOU SUMMARIZE THE PROVISIONS OF SECTIONS B. AND C.
2 OF THAT TARIFF?

3

4 A. Yes. Section A2.3.6.B.2 provides that business rates apply to, among other
5 things, “[o]ffices of hotels, boarding houses, and apartment houses; colleges,
6 quarters occupied by clubs and fraternal societies, private schools, hospitals,
7 nursing homes, libraries, churches, and other institutions.” Section A2.3.6.C.2
8 provides that residence rates apply, among other things, to “[s]ubscribers
9 residing in private apartments in hotels, clubs, hospitals, and boarding houses
10 who request their own individual residential service when business listings are
11 not employed.”

12

13 Q. UNDER BELLSOUTH’S TARIFF, DO BUSINESS OR RESIDENCE
14 RATES APPLY TO THE LINES SERVING POOLS AND ELEVATORS
15 THAT ARE THE SUBJECT OF THIS DOCKET?

16

17 A. Business rates apply to such lines.

18

19 Q. WHY?

20

21 A. Let’s use the lines involved in the Complaint that was filed against HTC as an
22 example. In that case, the telephone service was not being provided to any
23 particular condominium unit or to any private dwelling area. Instead, the

1 telephone service was being provided to common areas – swimming pools and
2 elevators.

3
4 Additionally, the swimming pool involved does not meet the applicable
5 definition of “residential swimming pool,” and the elevators are not “installed
6 in any single private dwelling residence” Accordingly, the swimming
7 pool involved is not a residential swimming pool and the elevators involved
8 are not residential elevators.

9
10 Finally, the HOA, and not any particular individual, was the entity that was
11 receiving telephone service at the swimming pool and at the elevators. *See*
12 HTC Order at 3. The HOA is “organized as a non-profit corporation,” *id.*
13 (emphasis added), and, therefore, it clearly is a business, not an individual.

14
15 All of these things make it clear that telephone service purchased at public
16 swimming pools and non-residence elevators are more like lines provided to
17 “[o]ffices of boarding houses, and apartment houses” and “quarters occupied
18 by clubs and fraternal societies . . . and other institutions,” and they are less
19 like lines provided to “[s]ubscribers residing in private apartments in hotels,
20 clubs, hospitals, and boarding houses who request their own individual
21 residential service” *See* BellSouth’s Tariffs at A2.3.6.B, C. (emphasis
22 added.) Clearly, the telephone lines involved in this docket are purchased by
23 businesses, not individuals; are provided for business, and not residential, use;

1 and should be priced at business, and not residential, levels.

2

3 Q. WHICH CLASSIFICATION WOULD APPLY IF AN INDIVIDUAL
4 HOMEOWNER WANTED TO INSTALL A PHONE LINE AT HER
5 RESIDENTIAL SWIMMING POOL OR IN AN ELEVATOR INSTALLED
6 IN A SINGLE PRIVATE DWELLING RESIDENCE?

7

8 A. The criteria in BellSouth's tariff would be applied on a case-by-case basis to
9 determine whether residence or business rates would apply. Having said that, I
10 imagine that in the majority of such cases, residential rates would apply.

11

12 Q. DOES BELL SOUTH OFFER ANY SERVICE THAT COULD ALLOW A
13 BUSINESS LIKE THE HOA TO PAY SOMETHING LESS THAN THE
14 FULL REGULAR BUSINESS LINE (1FB) PRICE FOR LINES THAT
15 SERVE SWIMMING POOLS AND ELEVATORS?

16

17 A. Yes. A business customer that subscribes to at least one BellSouth business
18 line can purchase one or more additional Back-Up Lines from BellSouth at
19 prices that are less than the prices of the customer's primary business lines.
20 *See* BellSouth General Subscriber Service Tariff A3.38. For example, a
21 customer that purchases at least one 1FB for \$32.55 to \$42.75 per month
22 (depending on what rate group the customer is in) can purchase one or more
23 additional Back-Up Lines at the same premises for one-half the normal 1FB

1 rate (\$16.28 to \$21.38 per month, depending on what rate group the customer
2 is in) for each Back-Up Line. *See Id.*, A3.38.J.3. Back-Up Line service is a
3 measured-based plan, and a customer with a 1FB primary line pays the reduced
4 monthly rate described above for each Back-Up Line plus \$.05 per minute or
5 fraction thereof for each outgoing and incoming local minute of use. *Id.*,
6 A3.38.K and .M.

7
8 Q. ARE YOU AWARE OF ANY OTHER STATE PUBLIC SERVICE
9 COMMISSIONS THAT HAVE ADDRESSED ISSUES SIMILAR TO THE
10 ONE PRESENTED IN THIS DOCKET?

11
12 A. I am not aware of any decisions that specifically address the appropriate rate
13 classification for telephone lines serving non-residential swimming pools, but I
14 am aware of two decisions addressing the appropriate rate classifications for
15 telephone lines serving elevators. Both of these decisions support the
16 application of business rates to such lines.

17
18 In 1994, for example, the Florida Public Service Commission entered a Final
19 Order in a generic proceeding it opened to investigate the proper tariffing of
20 telephone service for elevators and common areas within condominium and
21 similar facilities.¹ The Florida Commission found “that [local exchange

¹ See Final Order, *In Re: Investigation into proper tariffing of telephone service for elevators and common areas within residential facilities*, Order No. PSC-

1 companies] should be allowed to continue applying business rates to
2 telephones located in condominium elevators.”² The Florida Commission
3 stated that while calls made with these telephones likely would be made
4 primarily by condominium residents, “condominium associations use elevator
5 phone service to fulfill legal obligations and enhance the safety of condominium
6 residents,” including “meeting the requirement of installing a communications
7 device in an elevator.”³ The Florida Commission found that “[t]his is a business
8 activity and business rates should apply to a switched telephone line,” and further
9 found that “condominium residents can receive residential rates in their units but
10 an elevator is not a residential facility.”⁴

11
12 In 1990, the California Public Utilities Commission reached a similar conclusion
13 in a proceeding in which the owners’ association of a condominium complained
14 that a local exchange company charged business rates for telephone lines in an
15 elevator that connected solely to an alarm company and could not be used for any
16 other purpose.⁵ The California Commission dismissed the Complaint, saying that
17 “[e]levator emergency telephone service to an alarm company is a business
18 usage.”⁶

94-1180-FOF-TL in Docket No. 920837-TL (September 27, 1994). Exhibit CRM-2 to my testimony is a copy of this decision.

² *Id.* at 7.

³ *Id.*

⁴ *Id.*

⁵ See Opinion, *St. Francis Gardens Owners Assoc. v. General Telephone Co.*, Decision No. 91-04-056 in Case No. 90-12-020 (December 10, 1990). Exhibit CRM-3 to my testimony is a copy of this decision.

⁶ *Id.* at p.2, Finding of Fact No. 4.

1 Q. WOULD IT BE APPROPRIATE TO RECLASSIFY THESE TYPES OF
2 TELEPHONE LINES FROM BUSINESS TO RESIDENCE?

3

4 A. No. The HOA involved in the HTC Complaint clearly is not an individual
5 residential subscriber – it is a corporation. Corporations are businesses, and
6 they should pay business prices.

7

8 Beyond that, the lines at issue here do not serve swimming pools that are built
9 in connection with single family residences, nor do they serve elevators that
10 are installed in single private dwelling residences. Instead, they serve
11 swimming pools that fit the state’s definition of “public swimming pools” and
12 they serve elevators that are not used for residence purposes. Residential
13 prices do not, and should not, apply to these lines.

14

15 Additionally, today’s communications market is more competitive than ever,
16 with more providers offering more services to more customers than ever
17 before. If there is a market niche for telephone lines at swimming pools and in
18 elevators, the competitive communications market in South Carolina will
19 ensure that the niche is served.

20

21 Finally, many communications service providers (such as wireless, satellite,
22 and cable companies) would not be subject to any reclassification ordered by
23 the Commission. Moreover, as a practical matter, competitive local exchange

1 carriers ("CLECs") could avoid any such reclassification by simply refusing to
2 offer these types of lines because, unlike BellSouth and other incumbent local
3 exchange companies, CLECs have no carrier of last resort obligations. As a
4 practical matter, therefore, any such reclassification would apply to only one of
5 many groups of providers. It would be inappropriate and inequitable to require
6 one, and only one, of the many groups of providers in this competitive market
7 to reclassify these types of lines.

8
9 Q. WOULD RECLASSIFYING THESE LINES RAISE ANY OPERATIONAL
10 CONCERNS?

11
12 A. Yes. BellSouth's records do not indicate which of its existing business lines
13 serve swimming pools or elevators to which any such reclassification might
14 apply. Thus, BellSouth could not implement any such reclassification with
15 regard to existing lines unless subscribers who believe that their lines qualify
16 for reclassification were to contact BellSouth and provide documentation
17 supporting their belief. To the extent that subscribers did so, any such
18 reclassification would need to be implemented only on a going-forward basis
19 after BellSouth has had sufficient time to consider and process these requests
20 and supporting documents. Even on a going-forward basis, implementing such
21 reclassification likely would require the training of BellSouth's personnel who
22 would handle such requests, systems changes to implement such
23 reclassification, and possibly the creation and implementation of new universal

1 service ordering codes (“USOCs”). Depending on the extent of any such
2 reclassification, this would take at least six months and possibly longer.

3

4 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

5

6 A. Yes.

7

CRM-1

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2005-15-C

IN RE:)
)
Generic Proceeding to Address the)
Appropriate Rate Classification or Rate)
Structure for Telephone Lines Located in)
Elevators and for Telephone Lines Located)
In Proximity to Swimming Pools)
_____)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S PRE-HEARING BRIEF
ADDRESSING REQUIREMENTS FOR COMMUNICATIONS DEVICES AT
POOLS AND IN ELEVATORS**

On January 31, 2005, the Public Service Commission of South Carolina ("the Commission") issued a Revised Notice of Filing and Hearing in this docket. The Revised Notice indicates that the issue in this docket is the appropriate rate classification or rate structure for "those telephone lines that are required by regulation or code for safety or emergency use, such as telephone lines required to be located in elevators or in proximity to swimming pools."¹ This is consistent with the Order the Commission entered in the docket addressing a complaint regarding the rates the Horry Telephone Cooperative charges for telephone lines serving certain pools and elevators.²

¹ See Revised Notice.

² See Order Holding Disposition in Abeyance and Creating Generic Docket, *In Re: Rufus Watson, Bay Meadows Homeowners Assn. v. Horry Telephone Cooperative*, Order No. 2004-466 in Docket No. 2003-221-C at p.7 (October 5, 2004) ("the HTC Order")("A generic docket is established to address the appropriate rate classification or rate structure for telephone lines which are required by code or regulation for safety or emergency use, such as telephone lines located in elevators and in proximity to swimming pools."). BellSouth was not a party to that docket.

As the Commission noted in the HTC Order, the South Carolina Department of Health and Environmental Control (“DHEC”) has promulgated regulations governing the operation of pools,³ and the South Carolina Department of Labor, Licensing, and Regulation (“LLR”) has promulgated regulations governing the operation of elevators.⁴ BellSouth Telecommunications, Inc. (“BellSouth”) respectfully submits this short Pre-Hearing Brief summarizing these regulations as they may impact the issue addressed in this docket.⁵ As explained below, BellSouth is not aware of any code or regulation that requires the use of a landline telephone, as opposed to other devices, for safety or emergency use at a pool or in an elevator.

A. POOL REGULATIONS

The DHEC regulations addressing pools distinguish between “residential swimming pools” and “public swimming pools.” A “residential swimming pool” is defined as “any privately owned swimming pool which is built in connection with a single family residence, the use of which shall be confined to the family or the owner and his guests”⁶ Significantly, the definition of “residential swimming pool” specifically excludes “any type of cooperative housing or joint tenancy of two or more families”⁷ Accordingly, the pool at the condominiums that was at issue in the HTC Order, and most (if not all) pools that would be impacted by this docket, are not residential swimming pools. Instead, they are “public swimming pools” as defined in Regulation 61-51.A.43.

³ Exhibit A to this Pre-Hearing Brief is a copy of these DHEC regulations.

⁴ Exhibit B to this Pre-Hearing Brief is a copy of these LLR regulations.

⁵ BellSouth reserves the right to more fully address these and other matters in any post-hearing submissions the Commission may request from the parties.

⁶ See Regulation 61-51.A.47 (emphasis added).

⁷ *Id.* (emphasis added).

Regulation 61-51.C.12 addresses the need to have a device for notifying emergency personnel near a pool. By its own terms, this regulation applies only to “public swimming pools.” BellSouth is not aware of any regulation that requires an emergency notification device to be near a single-family residential pool.

With regard to public swimming pools, there is no requirement that the emergency notification device be a landline telephone. Regulation 61-51.C.12 provides that:

A toll free telephone or other device to notify emergency personnel must be provided within a two hundred (200) foot walking distance of the [public swimming] pool and in a location that is easily accessible during the hours that the pool in operation.⁸

Entities that are subject to this regulation can comply with it by using a landline telephone, but they also can comply by using other devices such as cell phones, and possibly pagers or other wireless devices. Accordingly, BellSouth is aware of no legal requirement that anyone place a landline telephone at or near any swimming pool.

B. ELEVATOR REGULATIONS

With regard to elevators, the General Assembly has enacted the South Carolina Elevator Code,⁹ and it does not apply to “any facility installed in any single private dwelling residence”¹⁰ Accordingly, if an elevator is in a single private dwelling residence, there is no legal requirement that it contain an emergency notification device.

The South Carolina Elevator Code does apply to non-residence elevators, and it authorizes the South Carolina Department of Labor, Licensing, and Regulation to

⁸ Regulation 61-51.C.12 (emphasis added). *See also* Regulation 61-51.J.11.(g).

⁹ S.C. Code Ann. §41-16-10 et. seq.,

¹⁰ *Id.*, S.C. Code Ann. §41-16-30 (emphasis added).

promulgate regulations addressing the operation of non-residence elevators.¹¹ Regulation 71-5100.1 provides that facilities installed after July 1, 1986 must comply with the ASME A17.1 Elevator Code, the relevant provisions of which say that elevators must be provided with:

means of two-way conversation between the car and a readily accessible point outside the hoistway which is available to emergency personnel (telephone, intercom, etc.).¹²

Accordingly, the HOA elevators that were the subject of the HTC Order, and most (if not all) of the elevators that would be impacted by this docket, are required to have two-way communications devices because they are not residence elevators. Moreover, there is no requirement for these communications devices to be telephones – to the contrary, they are expressly allowed to be intercoms or other devices that provide for two-way conversations. Accordingly, BellSouth is aware of no legal requirement that anyone place a landline telephone in any elevator.

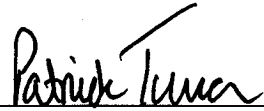
CONCLUSION

As explained above, BellSouth is not aware of any code or regulation that requires the use of a landline telephone, as opposed to other devices, for safety or emergency use at a pool or in an elevator.

¹¹ See *Id.*, §41-16-40.

¹² See ASME A17.1, §211.1(a)(2)(emphasis added). Exhibit C to this Pre-Hearing Brief is a copy of Section 211.1. Facilities in place or under construction prior to July 1, 1986 must comply with the 1986 edition of the ANSI A17.3, the relevant provisions of which say that elevators in unattended buildings must be provided with either (1) a telephone connected to a central telephone exchange system; or (2) a weatherproof audible signaling device that meets certain requirements. See Regulation 71-5200.1; 1986 Edition of ANSI A17.3, §3.11.1. Exhibit D to this Pre-Hearing Brief is a copy of this provision of the ANSI.

Respectfully submitted this 23rd day of March, 2005.

A handwritten signature in black ink, reading "Patrick W. Turner". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Patrick W. Turner
1600 Williams Street, Suite 5200
Columbia, South Carolina 29201
(803) 401-2900

ATTORNEY FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

DM5# 577785

CRM-2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into proper tariffing)	DOCKET NO. 920837-TL
of telephone service for elevators and)	ORDER NO. PSC-94-1180-FOF-TL
common areas within residential)	ISSUED: September 27, 1994
facilities.)	
)	
)	

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING

APPEARANCES:

MICHAEL A. GROSS, Esquire, PL-01, The Capitol, Tallahassee, Florida 32399-1050,
on behalf of Robert A. Butterworth, Attorney General of the State of Florida.

JEFF WAHLEN, Esquire, Post Office Box 165000, Altamonte Springs, Florida 32716-
5000, on behalf of Central Telephone Company of Florida and United
Telephone Company of Florida.

KIMBERLY CASWELL, Esquire, P. O. Box 110, MC 7, Tampa, Florida 33601, on behalf
of GTE Florida Incorporated.

ROBERT G. BEATTY, Esquire, and PHILLIP CARVER, Esquire, 150 South Monroe Street,
Suite 400, Tallahassee, Florida 32301, on behalf of Southern Bell Telephone
and Telegraph Company.

HAROLD McLEAN, Esquire, Office of Public Counsel, 111 West Madison Street,
Room 812, Tallahassee, Florida 32399-1400, on behalf of the Citizens of the
State of Florida.

MICHAEL BILLMEIER, Esquire, and TRACY HATCH, Esquire, Florida Public Service
Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863, on
behalf of the Commission Staff.

PRENTICE P. PRUITT, Esquire, 101 East Gaines Street, Tallahassee, Florida 32399-0863, on behalf of the Commissioners.

FINAL ORDER

BY THE COMMISSION:

I. Background

On February 19, 1992, Clipper Bay Condominium Association, Inc. (Clipper Bay) and several other condominium associations filed a complaint against United Telephone Company of Florida (United) regarding the rates charged for elevator telephones. On March 16, 1992, United filed its answer to Clipper Bay's Complaint and a Motion to Dismiss. On March 24, 1992, the Office of Public Counsel (OPC) filed a response to United's Motion to Dismiss.

By Order No. PSC-92-0625-FOF-TL, issued on July 7, 1992, we found that, under United's current tariff, the elevator telephones at issue were appropriately charged business rates. However, we acknowledged that for electric service, the common areas of condominiums are billed as residential. Thus an issue concerning the appropriate rates to charge for telephone service in condominium elevators was included in the United Telephone rate case (Docket No. 910980-TL).

On July 20, 1992, OPC filed a protest to our July 7, 1992 Order issued in the Clipper Bay complaint docket. Since all local exchange company (LEC) tariffs at that time contained essentially the same criteria for the application of rates, and any decision made in the United rate case would affect all LECs, we determined that it was most appropriate to address the issue in a generic proceeding. This docket was opened to investigate the proper tariffing of telephone service for elevators and common areas within residential facilities. Consequently, OPC withdrew its protest to the Order issued in the Clipper Bay Docket and that docket was closed.

By Order No. PSC-93-1127-FOF-TL, we proposed that business rates were appropriate for telephone service located in elevators and common areas of condominiums and cooperative apartments as provided in each of their respective tariffs. On August 19, 1993, Clipper Bay filed a protest to that Order and requested a formal hearing under Section 120.57, Florida Statutes.

Parties intervening in this docket included Clipper Bay Condominium Association (Clipper Bay), Cinnamon Cove Terrace Condominium I Association (Cinnamon Cove), Estero Sands Condominium Association (Estero), the Office of Public Counsel (OPC), the Office of the Attorney General (Attorney General), Central Telephone Company of Florida (Centel), United Telephone Company of Florida (United), GTE Florida Incorporated (GTEFL), and Southern Bell Telephone and Telegraph Company (Southern Bell). Clipper Bay, Cinnamon Cove, and Estero did not file pre-hearing statements, participate in the hearing, nor file post-hearing statements. Pursuant to Section 25-22.056(3)(a),(b), Florida Administrative Code, Clipper Bay, Cinnamon Cove, and Estero have waived their positions and were dismissed from this proceeding.

Order No. PSC-94-1080-PHO-TL set forth the issues to be addressed during this proceeding. The hearing on these issues was held May 25, 1994. Among the issues addressed were the requirements of Florida Law regarding devices for communication in a condominium elevator, the available technology, and this appropriate rates for interconnection with the local exchange companies. Our decisions regarding these issues are set forth below.

II. Legal Requirements

The parties did not contest the applicable legal requirements. The parties proposed following stipulation:

Generally, elevators installed in Florida since 1978 are required to have a "means of two-way conversation between the car and a readily accessible point outside the hoistway which is available to emergency personnel (telephone, intercom, etc.). The means to activate the two-way conversation system does not have to be provided in the car." Rule 211.1(a)(2), ASME, A17.1 (National Standard Safety Code for Elevators and Escalators) adopted in Florida by Rule 61C-5.001, Florida Administrative Code.

We approved the stipulation at the beginning of the hearing.

III. Available Technology

The evidence presented at the hearing showed five general methods which can be used to comply with the legal requirements. These methods are:

1. A LEC provided switched access line
2. An extension off of a PBX or switchboard
3. An intercom system
4. A dedicated (private) line or "ring-down" system
5. A line seizure device

Witness Thompson provided descriptions of various methods of providing two-way communication in an elevator. The most common method is via the installation of a telephone instrument in the elevator cab that is connected to a single line business rate (B1), LEC furnished dial line. Currently, the LECs charge this line a single line business rate. To reduce monthly costs, the elevator line can be installed as an extension from an existing telephone line in the facility, or from the facility's PBX or switchboard.

Several witnesses described an intercom system as another method to provide communications to and from an elevator. Under this scenario, lines from the elevator car are connected to a manual monitoring post in the building. Pushing a button on the elevator intercom panel alerts the monitoring post, which can then engage in a voice conversation with the elevator. Because of the high initial installation costs, as well as the continuing monitoring expense, the intercom system has been used only by a small percentage of customers, specifically by those facilities with personnel on the premises on a twenty-four-hour basis.

Another method for providing two-way communications in an elevator is a dedicated private line. GTEFL's witness Menard testified that a private line can be installed from an elevator to a customer's monitoring location and that private line service can be ordered from GTEFL. Southern Bell's witness Dick also testified that a condominium association could establish a dedicated private line between the elevator and an answering point such as an off-premises security station. Witness Thompson describes this method as a "ring-down" method, where no dialing is required because an off-hook condition at either end automatically rings the other instrument and allows two-way calling.

Witness Thompson testified that the intercom and ring-down systems are more expensive than the LEC provided switched access line method and that a high percentage of customers for elevator phone service used an extension from a switched line to provide two-way communication. Witness Thompson also indicated that the "ring-down" system was the most costly system since it required the use of point to point telephone lines, special exchange circuits, and telephone instruments that are provided by the LEC on a monthly basis. There are also additional charges for monitoring or answering services.

ORDER NO. PSC-94-1180-FOF-TL
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Witness Thompson further testified that a line-seizure device can be used to provide two-way communications in an elevator. A line-seizure device uses an existing telephone line that serves the premises, such as the office phone. The device seizes control of

the line when a call is placed from the elevator and dials the monitoring office. We note that the line-seizure device and monitoring service are supplied by witness Thompson's company.

Based on the evidence presented at the hearing, we find that condominium associations are not limited to switched access line service for the provision of two-way communications in an elevator. A condominium association can choose a LEC provided switched access line, an intercom system, a dedicated line, an extension from another phone or switchboard, or a line seizure device to fulfil its obligation to provide communications to elevators.

IV. Appropriate Rates For LEC Provided Lines

Currently, the LECs apply B1 rates to telephones in elevators. In their respective tariffs, GTEFL, United, and Centel determine the appropriate rate based on the character of use of the service. Business rates apply whenever the use of the service is primarily of a business, professional, institutional, or occupational nature. Business rates apply for establishments such as offices, stores, factories, mines, and other business establishments. Residential rates apply when the service's use is of a domestic nature. Residential rates apply to private residences not employing business listings, private apartments, private stables, and fraternity house rooms.

OPC witness Poucher argued that character of use meant the use by telephone user, the condominium residents, and not the subscriber to the service. An elevator phone is intended for the use of condominium residents and their guests. Since elevator telephones are used by condominium residents, witness Poucher argues that they should be assessed a residential rate.

Southern Bell's tariff differs from the other LECs but it also charges a business rate to phones in condominium elevators. Southern Bell witness Dick testified that the rate Southern Bell charges for phone service is based on the location of the phone. Phones at business locations are charged a business rate and phones at residential locations are charged a residential rate. Witness Dick also testified that the character of the subscriber is used to determine appropriate rates and since the subscriber to the service, the condominium association, is a business entity, the elevator phone service that condominium associations subscribe to should be assessed a business rate.

Witness Poucher also took issue with Southern Bell's interpretation of its tariff. Notwithstanding Southern Bell's argument that a condominium elevator is on a business location, witness Poucher contends that an elevator telephone is located in a residential facility and should be charged a residential rate.

Only witness Dick estimated the revenue loss if we were to change the rates from business to residential and he conceded that figure was just a guess. Witness Dick testified further that Florida ratepayers could suffer the burden of subsidizing condominium associations via increased rates to other ratepayers.

We find that LECs should be allowed to continue applying business rates to telephones located in condominium elevators. While we believe that calls made with these telephones will be made primarily by condominium residents, condominium associations use elevator phone service to fulfill legal obligations and enhance the safety of condominium residents. This includes meeting the requirement of installing a communications device in an elevator. This is a business activity and business rates should apply to a switched telephone line. The condominium residents can receive residential rates in their units but an elevator is not a residential facility. We agree that an elevator is not in itself a business location. However, the one strong indication as to whether the location of service is business or residential is the type of customer making the request. Since the condominium association is a business entity making the request for phone service, a business rate is appropriate.

We note that two LECs, Southern Bell and GTEFL, offer a business message rate option. This option offers business customers a less expensive option for local exchange service. Condominium associations located in areas where the service is available may wish to investigate this option.

Based on the foregoing, it is

ORDERED BY the Florida Public Service Commission that Florida law requires a means of two-way communication in an elevator between the elevator and the outside, as described in the body of this Order. It is further

ORDERED that there are various ways of fulfilling this obligation and each entity should investigate the options and determine which best suits its needs. It is further

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ORDERED that the Florida local exchange companies may continue to charge business rates for switched access lines to condominium elevators. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 27th day of September, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by:
Chief, Bureau of Records

(S E A L)

LMB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of

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Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

CRM-3

1 of 2 DOCUMENTS

St. Francis Gardens Owners Association, Complainant, vs. General Telephone Company,
Defendant

Decision No. 91-04-056, Case No. 90-12-020 (Filed December 10, 1990)

California Public Utilities Commission

1991 Cal. PUC LEXIS 205; 39 CPUC2d 540

April 24, 1991

PANEL: [*1]

Patricia M. Eckert, President; G. Mitchell Wilk, John B. Ohanian, Daniel Wm. Fessler, Norman D. Shumway,
Commissioners

OPINION: OPINION**Statement of Facts**

GTE California Incorporated (GTEC) (U 1002 C), herein captioned as General Telephone Company, provides telephone service for compensation in various areas of California, including the City of Santa Barbara. As a telephone corporation providing such service for the public, it is a public utility (Public Utilities (PU) Code § 216(a)) subject to regulation by this Commission.

St. Francis Gardens Owners Association (St. Francis Gardens) is a residential nine-unit condominium located in Santa Barbara. The condominium is served by an elevator which since November 25, 1985 has been equipped with an emergency service telephone connected solely to an alarm company and the telephone cannot be used for any other purpose. The service furnished by GTEC is Business Flat Rate Service with a Touch Call Line terminating on Customer Provided Equipment. St. Francis Gardens does not subscribe to the Inside Wire Maintenance Contract. The monthly service rate has been \$ 23.95 plus applicable taxes, surcharges, and an interstate network access [*2] charge. The emergency service is held in the name of the St. Francis Gardens Owners Association.

The owners association has complained about the monthly rate being charged, contending that the service should be billed as residence service rather than business service, and that the association accordingly is being "grossly overcharged." n1 An informal complaint filed with the Consumer Affairs Branch resulted in a finding that the utility was billing in compliance with its tariffs on file with the Commission. However, Consumer Affairs also pointed out that Business Local Measured Service would be implemented in the association's area on March 10, 1991 and that the monthly rate would then decrease to \$ 10.95 plus usage. This information, however, did not satisfy the association which has since filed the present complaint signed by its treasurer.

n1 The residence service rate was \$ 9.75. Under measured service it would be \$ 5.25.

Discussion

PU Code § 1702 and Rule 9 of this Commission's Rules of Practice and Procedure, as relevant to this complaint, provide that while any person may file a complaint setting forth anything a utility has done or failed to do in violation [*3] of any provision of law, or rule or order of this Commission, the Commission is not to entertain, except on its own motion, a complaint as to the reasonableness of any rate or charge unless the complaint is signed by at least 25 actual or prospective telephone service customers.

The present complaint does not state a cause of action under either the PU Code or our Rule in that it states no facts showing that GTEC has acted or failed to act in violation of any law, or of any order or rule of the Commission. A public utility's tariffs filed with the Commission have the force and effect of law (*Dollar-A-Day Rent-A-Car Sys. v. Pac. Tel. & Tel. Co.* (1972) 26 CA 3d 454). In providing emergency telephone service from the condominium's elevator to the alarm company, GTEC has acted in accordance with all the terms and conditions contained in its tariffs on file with this Commission.

These filed tariffs contain a schedule devoted to definitions, as well as the utility's Rule 22. Included therein are definitions of "Business Service" and "Residence Service." n2 The former relates to the furnishing of telephone service for business purposes, whereas the latter relates to the furnishing [*4] of telephone service for domestic, nonbusiness pursuits. The emergency telephone in the condominium elevator cannot be used for domestic pursuits; it can only be used to call the alarm company. Rule 22 A.4 provides that business rates apply in places of dwelling when the principal use of the service is of a business, professional, or occupational nature. Residential Service applies in locations where the actual or obvious use of the service is domestic. Elevator emergency telephone service to an alarm company is a business usage, and scheduled rates must be inflexibly enforced in order to maintain equality between all without preferential privileges of any sort.

n2 GTEC Schedule Cal. P.U.C. No. D&R provides these definitions:

Business Service

Exchange service furnished to individuals engaged in a business, firms, partnerships, corporations, agencies, shops, works, tenants of office buildings, hotels receiving individual or party line service, and individuals conducting any business or practicing a profession having no other office than their residence and where the actual or obvious use of the service is principally or substantially of a business, professional or occupational nature.

Residence Service

Residence service is exchange service furnished customers where the actual or obvious use is for domestic purposes. [*5]

Findings of Fact

1. GTEC is a telephone corporation subject to regulation by this Commission.
2. GTEC has acted in accordance with the terms and conditions contained in its tariffs filed with this Commission.
3. The complaint fails to state or allege any violation of law or of any rule or order of this Commission.
4. Elevator emergency telephone service to an alarm company is a business usage.
5. The complaint is signed by the treasurer of the homeowners association.

Conclusions of Law

1. The complaint fails to state a cause of action under PU Code § 1702.
2. The complainant does not have standing to complain of the reasonableness of the rate or charges made by GTEC under Rule 9 of the Commission's Rules of Practice and Procedure.
3. The complaint should be dismissed.

ORDER

IT IS ORDERED that Case 90-12-020 filed December 10, 1991 is dismissed.

This order becomes effective 30 days from today.

Dated April 24, 1991, at San Francisco, California.

STATE OF SOUTH CAROLINA

)

)

COUNTY OF RICHLAND

)

CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Direct Testimony of Carlos Morillo in Docket No. 2005-15-C to be served upon the following this March 23, 2005:

Florence P. Belser, Esquire
General Counsel
Office of Regulatory Staff
Post Office Box 11263
Columbia, SC 29211
(U. S. Mail and Electronic Mail)

F. David Butler, Esquire
General Counsel
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(U. S. Mail and Electronic Mail)

John F. Beach, Esquire
Ellis Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202
(SCPCA)
(U. S. Mail and Electronic Mail)

Rufus S. Watson, Jr.
Self and Bay Meadows Homeowners Association
4700 Touchey Drive #7
Myrtle Beach, South Carolina 29579
(U. S. Mail)

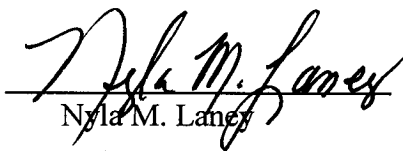
Scott A. Elliott, Esquire
Elliott & Elliott
721 Olive Street
Columbia, South Carolina 29205
(Sprint/United Telephone)
(U. S. Mail and Electronic Mail)

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SC PUBLIC SERVICE
COMMISSION

Stan Bugner
State Director
Suite 825
1301 Gervais Street
Columbia, South Carolina 29201
(Verizon South, Inc.)
(U. S. Mail and Electronic Mail)

Steve W. Hamm, Esquire
Richardson Plowden Carpenter & Robinson, P.A.
Post Office Box 7788
Columbia, South Carolina 29202
(Verizon South, Inc.)
(U. S. Mail and Electronic Mail)

Margaret M. Fox, Esquire
McNair
Post Office Box 11390
Columbia, South Carolina 29211
(South Carolina Telephone Coalition)
(U. S. Mail and Electronic Mail)



Nyla M. Laney